Editor's note: appealed - aff'd, Civ. No. 81-0961 J (D. Utah Nov. 12, 1982), 553 F.Supp. 86

BURTON/HAWKS, INC.

IBLA 80-375 Decided April 29, 1980

Appeal from determination by the Utah State Office, Bureau of Land Management finding oil and gas leases to have terminated by operation of law. U-8890-A, U-8891-A, U-8892-A, U-8893-A, U-8901-A, U-8938-A, U-8939-A, U-8941-A, U-8942-A, U-8944-A.

Set aside and remanded.

1. Oil and Gas Leases: Termination -- Oil and Gas Leases: Unit and Cooperative Agreements -- Oil and Gas Leases: Well Capable of Production

   An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

2. Hearings -- Oil and Gas Leases: Termination -- Oil and Gas Leases: Unit and Cooperative Agreements -- Oil and Gas Leases: Well Capable of Production

   Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

APPEARANCES: Richard Allen, Esq., Senior and Senior, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Burton/Hawks, Inc., appeals from a determination dated January 18, 1980, by the Utah State Office, Bureau of Land Management (BLM), holding the above designated oil and gas leases to have terminated by operation of law on the ground that no drilling activities were being conducted over the leases' expiration date.

The 10-year leases were issued effective August 1, 1969, and were committed to the Antelope Canyon Unit Agreement approved effective June 15, 1979. The leases were due to expire on July 31, 1979.

In a memorandum dated June 15, 1979, the Acting Oil and Gas Supervisor, Geological Survey, Casper, Wyoming, advised the BLM State Director that no oil and gas had been discovered in the Antelope Canyon Unit area. The determination appealed from was based on further information from Geological Survey that no drilling activities were being conducted.

Appellant's major contention on appeal is that all of the subject leases were extended by production in paying quantities under paragraph 18(e) of the Unit Agreement and 30 U.S.C. § 226(j) (1976), the pertinent portions of which provide, respectively, as follows:

[Unit Agreement § 18(e)]

> Any other Federal lease committed hereto shall continue in force beyond the term so provided therein or by law as to the land committed so long as such lease remains subject hereto, provided that production is had in paying quantities under this unit agreement prior to the expiration date of the term of such lease * * *.

[30 U.S.C. § 226(j) (1976)]

> Any other lease [than a 20-year lease] issued under any section of this chapter which has heretofore or may hereafter be committed to any such plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: Provided, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease.

Appellant asserts that its Burton/Hawks No. 5-1 and No. 25-1 wells, both on the committed lands "are capable of producing in paying quantities and * * * would be producing if there was a pipeline in the area to which the wells could be connected." These wells remain in a shut-in status awaiting the construction of a pipeline. Appellant requests a hearing to present detailed information on the capability of these wells to produce in quantity. Appellant states that the

leases on which these two wells are located (U-8894-A and U-8897-A) have been extended beyond their primary terms and were put on minimal royalty status rather than rental status.

Citing 30 U.S.C. § 226(f), 1/ 43 CFR 3107.3-2, 2/ and other authorities, appellant contends that the leases here in issue should be continued on the basis of long standing departmental policy to the effect that all leases committed to a unit agreement are treated as one lease for purposes of production.

Appellant's third argument is that the leases here in issue were extended by actual drilling operations under the unit agreement. Appellant asserts that a well was drilled, completed as a dry hole, and plugged on July 6, 1979. Appellant urges that this good faith effort to comply with the extension provisions (30 U.S.C. § 226(e) (1976)) should be sufficient to extend the leases.

[1] If there had been production of oil and gas in paying quantities on any lease committed to the unit, that production would have been credited to the subject leases and their terms would have continued beyond the 10-year expiration date. Solicitor's Opinion, 69 I.D. 110 (1962); Manhattan Resources, Inc., 34 IBLA 346 (1978).

The phrase "well capable of producing oil or gas in paying quantities" was recently construed by this Board in American Resources Management Corp., 40 IBLA 195 (1979), where we stated:

> [The] legislative history shows a concern for lessees who have expended money to develop a well capable of production. The emphasis on production being suspended suggests a well where there has been production or where production can clearly be obtained but is not because there is a "lack of pipelines, roads, or markets for the oil and gas." There is no suggestion that the mere existence of a well suffices where it is not physically capable of producing oil or gas in paying quantities.

1/ 30 U.S.C. § 226(f) reads in part as follows:

"No lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee is allowed a reasonable time, which shall be not less than sixty days after notice by registered or certified mail, within which to place such well in producing status * * *."

2/ 43 CFR 3107.3-2 reads as follows:

"No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the well on a producing status within 60 days after receipt of notice by registered mail from the Regional Oil and Gas Supervisor to do so: * * *."

[2] There is no indication from the record before us that Geological Survey had an opportunity to consider or review the contentions raised by appellant in this appeal. Therefore, the case will be remanded for referral to Survey to afford it an opportunity to rule on them. See Manhattan Resources, Inc., supra. Should Survey determine that there was no producible well as a result of unit operations within the unitized area, due notice shall be given Burton/Hawks, advising them of the basis of the determination and of their option to request a hearing on the issue before an Administrative Law Judge.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the determination appealed from is set aside and the case is remanded for further proceedings consistent herewith.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge